



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** My Own Meals, Inc.

**File:** B-257140.2

**Date:** August 29, 1994

Mary Anne Jackson for the protester.  
Michael Trovarelli, Esq., and Susan L. Extein, Esq., Defense Logistics Agency, for the agency.  
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest challenging the failure to solicit the protester for a humanitarian daily rations requirement is denied where record indicates that contracting agency reasonably determined that only the four solicited firms were capable of promptly and properly meeting the urgent supply requirements caused by relief efforts in the former Yugoslavia; based on protester's lack of experience in assembling rations, agency reasonably concluded that the protester would be unable to perform the requirements within the urgent time frame.

### DECISION

My Own Meals, Inc. (MOM) protests its exclusion as a solicited source for humanitarian daily rations (HDR) under request for proposals (RFP) No. SP0300-94-R-7005, issued by the Defense Logistics Agency (DLA). DLA limited competition to four known sources based on a determination that unusual and compelling urgency for the rations existed.

We deny the protest.

HDRs are ready-to-eat, multicomponent, flexible pouch meals, containing at least two entrees and complementary items. They must meet minimum nutritional requirements which are sufficient to sustain a moderately malnourished individual for 1 day. Additionally, they are processed or "thermostabilized" in order to maintain a minimum shelf life of 18 months without refrigeration or freezing and must be able to withstand airdropping. HDRs are designed to be a less expensive, culturally acceptable substitute (*i.e.*, containing no animal products or by-products, except minimal

dairy products) for the Department of Defense's (DOD) meals ready-to-eat (MRE) field troop rations, which have been distributed previously as an emergency aid.

The procurement is the result of a DOD emergency procurement request made to DLA on March 8, 1994, for HDRs to support immediate relief feeding efforts in the former Yugoslavia and other global disaster areas. At the time of the request, HDR supplies were dwindling and, in a worst case scenario, were expected to be exhausted as early as April 28, based on United Nations requests for airdrops of up to 100,000 HDRs per week in Bosnia. DOD's goal was to have new supplies available by late April or early May.

The contracting officer determined that the immediate need for the HDRs did not allow for the normal 13-month procurement cycle for ready-to-eat-type rations. As a result, on March 9, the agency finalized a justification for use of other than competitive procedures on the basis of unusual and compelling urgency pursuant to 10 U.S.C. § 2304(c)(2), as required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f). In the justification, the agency concluded that the HDRs were urgently required to prevent starvation in the former Yugoslavia, and as required in other global disaster areas. According to the justification, the use of a ready-to-eat-type ration would permit emergency feeding as a stop-gap measure for periods during which bulk feeding--which requires clean water and fuel for preparation--is difficult or impossible. In the justification, the agency determined that the requirements for HDRs outnumbered current available excess stock. The agency considered the use of MREs, but determined that future excess MRE stocks were unpredictable and that in any event use of the limited MRE stock would unacceptably jeopardize troop readiness for humanitarian efforts. The justification concluded that "[b]ased upon review of contract histories and the previous procurement

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<sup>1</sup>Prior to the procurement here, DLA had conducted another HDR procurement, where it made award to Right Away Foods Corporation on September 2, 1993, for 2,150,000 HDRs pursuant to the unusual and compelling urgency exception to other than full and open competitive procedures. See 10 U.S.C. § 2304(c)(2) (1988). However, the record indicates that at the time of DOD's March 8 procurement request here, 1,500,000 of the HDR supply had been used in the former Soviet Union republics of Azerbaijan and Georgia, as well as the former Yugoslavia.

<sup>2</sup>Additionally, the agency reports that the MREs do not meet the requisite nutritional needs of the Bosnian population, e.g., since they contain animal products or by-products.

. . . four contractors with assembly capability [Cinpac, Inc., Right Away Foods Corporation, SO-PAK-CO, and Star Foods] are the only firms that can successfully produce this item and meet the required delivery dates."

On March 18, the agency issued the solicitation to the four sources named in the justification.<sup>3</sup> The RFP requires production, assembly, and delivery of 2,500,000 HDRs. Delivery was to commence as soon as possible, but no later than 30 days after award, and be completed 90 days after award. After MOM filed this protest on April 26, the agency, on May 4, authorized award of a contract, notwithstanding the protest, in accordance with 31 U.S.C § 3553(c) (1988). On May 6, the agency awarded a contract to Right Away Foods in the amount of \$8,875,000.

MOM argues that DLA improperly precluded it from competing. According to MOM, the agency should have known that it was capable of performing the HDR contract since the firm is "a known, capable, and proven supplier of shelf stable, ethnic foods." In support of its position, MOM contends that it has a history of contracting with the government, including a DLA contract for mustard, and Department of Veterans Affairs (VA) contracts for macaroni, spaghetti, egg noodles, olives, coffee, and powdered milk. Additionally, MOM states that DLA was aware that the firm is working with the Department of the Army's Natick Research, Development, and Engineering Center to create multi-faith rations (MFR), which are kosher and/or vegetarian. MOM acknowledges that it does not have demonstrated ready-to-eat ration assembly capabilities, but argues that it could have subcontracted that portion of the work.

DLA responds that it properly limited competition to sources with the known capability to produce the HDRs within the available time, based on the firms' past or current assembly of similar MREs. According to the agency, while HDR and MRE food content and costs differ, both types of ration are processed and assembled in the same manner, and thus require the same technical skills and equipment. Further, the agency asserts, all four solicited sources were known to have the financial capability to perform the work.

In contrast, DLA maintains, MOM's experience with selling food items, such as mustard and pasta, does not demonstrate that the firm is capable of large-scale production of multicomponent rations in specialty packaging within a short time period, as is required here. Further, the agency

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<sup>3</sup>The solicitation was not synopsisized due to unusual and compelling urgency, as permitted by Federal Acquisition Regulation § 5.202(a)(2).

states that MOM's developmental experience with MFR, a new and different item, does not show a capability for large-scale production of HDRs. Also, the agency asserts that the urgent time frame of the emergency procurement here (3 weeks planned, 6 weeks actual) would not have allowed sufficient time for a pre-award survey of the firm, which usually takes 6 weeks and which would be necessary because the contracting officer had no knowledge of the firm's financial capacity for the type of contract here.

Under CICA, an agency may use noncompetitive procedures to procure goods or services where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits bids or proposals, 10 U.S.C § 2304(c)(2). Thus, an agency using the urgency exception may restrict competition to the firms it reasonably believes can properly meet agency needs in the required time, Allied Materials & Equip. Co., Inc., B-235585.2, Oct. 4, 1989, 89-2 CPD ¶ 302, and we will object to the agency's determination only where the decision lacks a reasonable basis. Joseph L. De Clerk and Assocs., Inc., 68 Comp. Gen. 183 (1989), 89-1 CPD ¶ 47.

DLA's decision not to solicit an offer from MOM was reasonable. The record existing at the time the contracting officer made his determination indicated that MOM had no experience in large-scale, ready-to-eat ration assembly. MOM basically confirms its lack of experience in this area. Indeed, the food contracting experience MOM had (the mustard contract with DLA and the pasta/coffee/powdered milk contracts with VA) were more limited in scope and involved different skills and equipment than the HDR requirement here. For example, the record indicates that MOM's mustard contract with DLA was in the total amount of only \$14,098, and that MOM acted only as a dealer, supplying the single nonration product manufactured by another company. In fact, MOM's protest comments indicate that the firm does not have its own production facility. While the protester asserts that it could have subcontracted the assembly work (the RFP allowed for product processing and ration assembly at separate plants), this would not have eliminated the firm's more fundamental lack of experience in actually producing the rations. As for MOM's development of an MFR, there is no indication that MOM has been awarded a contract for or made delivery of this item." Consequently, this

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<sup>4</sup>While the record indicates that a limited quantity of developmental MFRs were supplied by MOM for use by troops in Somalia, the protester acknowledges that they were not part of an operational rations program and the record indicates  
(continued...)

developmental experience also provides no indication of comparable large-scale HDR experience. Given these indications of MOM's lack of adequate experience, the contracting officer reasonably concluded that MOM lacked the proven capability to perform the HDR contract within the short time frame required, and thus properly did not include the firm in the competition.

MOM further argues that the need for this limited competition procurement stems from DLA's lack of advance procurement planning. Under 10 U.S.C. § 2304(f)(5)(A), award of a contract using other than competitive procedures is prohibited where necessitated by a lack of advance planning by contracting officials. According to the protester, "it was well known within the production community and within other government organizations that the procurement request was coming"; thus, the protester concludes, the agency had sufficient time to investigate MOM's potential as a competitor, including its financial capability. This argument is without merit.

As discussed above, this requirement was created by the unanticipated demands of the Bosnian relief operation and the dwindling HDR stock from the previous procurement. While the agency acknowledges that it became aware several weeks prior to the receipt of the HDR purchase request here that the request might be made, it maintains that funding was uncertain, and that it could not commence procurement planning with certainty until the actual request was issued. A 3-week delay based on the agency's legitimate need for funding certainty does not amount to a lack of procurement planning.<sup>5</sup> The agency does state that if HDRs become a

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<sup>4</sup>(...continued)

that at least some of the meals were supplied without charge.

<sup>5</sup>In any event, even without this 3-week delay, which would have resulted in a total 9-week lead time for the procurement, it does not appear that a fully competitive procurement would have been any more feasible; as indicated above, the record indicates that the normal procurement cycle for a ready-to-eat-type rations procurement is 13 months.

recurring requirement, it will consider full and open competition in the future.

The protest is denied.

/s/ James A. Spangenberg  
for Robert P. Murphy  
Acting General Counsel